

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION**

**16 FRONT STREET LLC, and;
C. RICHARD COTTON,**

Plaintiffs

v.

MISSISSIPPI SILICON, LLC,

Defendant

CIVIL ACTION 1:14-cv-00183-SA-DAS

**DEFENDANT MISSISSIPPI SILICON'S
OPPOSITION TO NUCOR'S MOTION FOR
LEAVE TO FILE MEMORANDUM
RECOMMENDING THAT THE COURT
EXERCISE ITS SUBJECT MATTER
JURISDICTION**

Defendant Mississippi Silicon LLC ("MS Silicon") opposes the Motion for Leave to File Memorandum Recommending that the Court Exercise Its Subject Matter Jurisdiction filed by Proposed-Intervenor Nucor Steel Decatur LLC ("Nucor"). For the reasons explained below, Nucor's Motion for Leave should be denied.

1. This case involves an effort to enjoin MS Silicon from lawfully constructing a silicon metal production facility in accordance with a Prevention of Significant Deterioration permit validly issued by the Mississippi Environmental Quality Permit Board. After waiting until MS Silicon had engaged in four months of construction activity, Plaintiffs filed this action on September 29 and immediately moved for emergency relief on October 1. On November 7, the Court directed the parties to submit supplemental briefing regarding "whether this Court has subject matter jurisdiction over Plaintiffs' public participation claim," 11/7/14 Order at 10, and set the injunction for a hearing on December 2. 11/10/14 Notice of Hearing. (The Court subsequently removed that hearing from its calendar.)

2. On the final day for supplemental briefing, over seven weeks after the Plaintiffs filed their original motion for emergency relief, Nucor filed a Motion to Intervene and Motion for Leave to submit a brief on the jurisdictional issue.

3. Nucor's timing in filing these Motions reeks of gamesmanship. Nucor knew of its purported interest in intervening from the inception of this lawsuit in September 2014. Nevertheless, Nucor waited to file its Motions until the final day allowed for the parties to file their second round of briefs on the preliminary injunction. This day was also only one week before the scheduled preliminary injunction hearing and immediately preceded the intervening Thanksgiving holiday.

4. Even putting aside Nucor's gamesmanship, its Motion for Leave is procedurally deficient. Nucor is not a party to this lawsuit. Accordingly, the Court need not consider Nucor's proposed brief. *See Halo Wireless, Inc. v. Alenco Communs. Inc.*, 684 F.3d 581, 596 (5th Cir. 2012) (granting motion to strike nonparty's brief).

5. Nor should the Court consider Nucor's brief as "a matter of judicial grace." *Id.* (explaining courts' broad discretion in deciding whether to allow a nonparty to submit a brief as *amicus curiae*). The brief sheds no new light on the jurisdictional issue before the Court. Although Nucor maintains that its brief will "aid the Court in its analysis of the complex jurisdictional scheme applicable to claims brought under Clean Air Act," (Mtn. for Leave at 1), it offers no explanation as to why it is in a better position to analyze the jurisdictional issue than the actual parties to the case. Indeed, the parties have already briefed this issue on two separate occasions.

6. For these reasons, MS Silicon respectfully requests that the Court deny Nucor's Motion for Leave to File Memorandum Recommending that the Court Exercise Its Subject

Matter Jurisdiction. In the event the Court grants Nucor's Motion for Leave and accepts Nucor's Memorandum, MS Silicon requests permission to file an opposition that fully addresses the substance of the arguments raised by Nucor.

Respectfully submitted this 28th day of November, 2014.

MISSISSIPPI SILICON, LLC

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By: /s/ Martin T. Booher

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CERTIFICATE OF SERVICE

I certify that the foregoing was electronically filed on November 28, 2014. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Martin T. Booher
Attorney for Mississippi Silicon LLC